REMARKS

Claims 1-87 were examined on their merits. New claims 88-92 has been added to the application. Accordingly, claims 1-92 are all the claims currently pending in the present application. Reconsideration of the outstanding objections/rejections in the present application is respectfully requested based on the following remarks.

Formal Matters

1. Claim 21 is objected to because the Examiner alleges it contains multiple preambles. More specifically, the Examiner asserts the recitation of "A network communication system, comprising:" and "...a source device comprising:" evidences multiple preambles. Applicants respectfully disagree. The phrase "A network communication system, comprising:" is properly read as a preamble. Contrarily, the phrase "...a source device comprising:" is not, and must not be construed as, a preamble. The phrase "...a source device comprising:" introduces the limitation of a source device, and further specifies that the source device comprises additional elements. The use of the word "comprising" in conjunction with the source device is required to properly describe the device to be patented. This is because the word "comprising" is a specific phrase known to patent prosecutors as being inclusive or open-ended and which does not exclude additional, unrecited elements. *See* M.P.E.P. § 2111.03. The use of a different word in place of "comprising," or altering the claim in another manner, introduces the risk that the claim, and the elements of thereof, will be improperly construed by other practitioners.

Even assuming, *arguendo*, that claim 21 recites multiple preambles, at least the preamble "...a source device comprising:" should be properly construed to limit the claim. "Any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation." M.P.E.P. § 2111.02; *See also* Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989). In the present case, the network communication system must comprise a source device, and thus the terminology of a source device limits the structure of the network communication system. Accordingly, the phrase "...a source device comprising:," as well as the additional elements which comprise the source device, must be given patentable weight. Furthermore, "[A] claim preamble has the

import that the claim as a whole suggests for it." M.P.E.P. § 2111.02 (citing Bell Communications Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995)). With respect to claim 21, the claim clearly suggests that the phrase "...a source device comprising:," and the additional elements it comprises, should be given patentable weight. The source device and its elements make up a substantial portion of the claim and must be construed to commensurately limit the claimed network communication system. A contrary reading of the claim would result in a network communication system comprising only destination devices, e.g., no network communication system at all. Because claim 21 does not recite multiple preambles, and since the phrase "...a source device comprising:" and the elements it comprises must be given patentable weight, the Examiner is respectfully requested to reconsider and withdraw his objection to claim 21.

2. While it is believed that this Response is timely filed and no fee for an extension of time is required, in the event that a variance exists between the amount tendered and that required by the U.S. Patent and Trademark Office to enter and consider this Response, or to prevent abandonment of the present application, please charge or credit such variance to the undersigned's Deposit Account No. 50-2613 (Order No. 45098.00014.UTL1.P1068).

Art Rejections

Independent Claim 1

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Hoyer et al., U.S. Patent No. 6,263,361 ("Hoyer"). *See* Office Action at page 3. Particularly, the Examiner contends that Hoyer discloses every limitation recited in claim 1. Applicants respectfully disagree and request the Examiner to reconsider the rejection for at least the reasons stated below.

As stated in M.P.E.P. § 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed Cir. 1987).

Hoyer fails to disclose each and every element of independent claim 1. More specifically, independent claim 1 recites at least the following limitation not disclosed in Hoyer:

> "a cluster manager configured to determine performance similarities for a plurality of connections and group the plurality of connections into performance clusters based on the determined performance similarities"

Hoyer is directed towards a method and apparatus for calculating web site capacity. *See, e.g.,* Hoyer Abstract. More specifically, Hoyer teaches a client computer and software system which connects to a performance monitor server via the Internet. *See, e.g.,* Hoyer column 6, lines 45-54. On the performance monitor server resides a cluster manager, a cluster controller, and a performance manager component. *See, e.g.,* Hoyer column 7, lines 12-21. The performance monitor server is connected to web servers via a computer network and communicates with the web servers using SNMP. *See, e.g.,* Hoyer column 6, lines 3-10; column 8, lines 41-50. The performance monitor server is capable of gathering performance information from web servers, including CPU utilization, response time, and hit count. *See* Hoyer at column 8, lines 12-16. Furthermore, the performance monitor server will relay this information to the client computer if the client computer requests the information via the cluster manager console. *See* Hoyer, column 7, lines 18-20.

The Examiner further appears to argue that a cluster manager which provides the ability to configure computer clusters, enable and disable web servers within a cluster, and to monitor cluster performance discloses the claimed source device configured to determine performance similarities for a plurality of connections. See Office Action at page 3. Applicants respectfully disagree. Hoyer has absolutely no disclosure regarding a cluster manager which can be configured to determine performance similarities for a plurality of connections. The cluster manager disclosed in Hoyer collects or computes web server data such as CPU utilization, hit count, and response time. *See, e.g.,* Hoyer column 8, lines 23-27. The cluster manager is also capable of comparing a web server's incoming performance data with its minimum and maximum values of each performance variable and updating those values as necessary. *See* Hoyer column 10, lines 51-57. However, absent from Hoyer is any disclosure whatsoever regarding the cluster manager comparing the performance values of different web servers or clusters. The system disclosed in Hoyer provides the tools to compare the performance of different web servers or clusters, but only a human, utilizing those tools, is capable of comparing the performance of different web servers or clusters. *See, e.g.,* Hoyer column 10, lines 6-18.

Unlike Hoyer, the present application discloses and claims a cluster manager configured to determine performance similarities for a plurality of connections. Since Hoyer has absolutely no disclosure regarding a cluster manager capable of comparing the performance values of different web servers or clusters, it is impossible for Hoyer to disclose a cluster manager configured to determine performance similarities for a plurality of connections, as claimed in independent claims 1, 21 and 57, and similarly recited in independent claims 65 and 67.

Finally, the Examiner appears to argue that a cluster group-a grouping of web servers with identical configurations-and a client computer that can recognize and display replicated web servers in a logical manner discloses the claimed cluster manager configured to group the plurality of connections into performance clusters based on the determined performance similarities. *See* Office Action at page 3. Applicants respectfully disagree. As discussed above, and fully incorporated herein, Hoyer has no disclosure regarding a cluster manager capable of determining performance similarities for a plurality of connections. It follows that Hoyer does not disclose grouping the plurality of connections into performance clusters based on determined performance similarities. Furthermore, though Hoyer discloses a cluster group, it does not disclose how that cluster group came into existence. *See, e.g.,* Hoyer column 5, lines 33-34. Hoyer merely discloses the capability of recognizing preexisting clusters, and displaying those clusters in a logical manner. *See* Hoyer column 16, line 65 – column 17, line 21. Hoyer does not suggest that Netscape Enterprise Server or Microsoft H1S contain a cluster manager, can determine performance similarities between web servers, or can group web servers into clusters based on these similarities. *See* Hoyer column 16, lines 61-65. Thus, wholly absent from Hoyer is any disclosure whatsoever regarding grouping connections into clusters, based on performance similarities or otherwise, as disclosed and claimed in the present invention. Since Hoyer does not disclose a cluster manager configured to determine performance similarities of web servers, or a cluster manager configured to group web servers into clusters, Hoyer cannot disclose a cluster manager configured to group the plurality of connections into performance clusters based on the determined performance similarities, as claimed in independent claims 1, 21 and 57, and similarly recited in independent claims 65 and 67.

Because Hoyer does not disclosed a plurality of connection interfaces, a cluster manager configured to determine performance similarities for a plurality of connections, or a cluster manager configured to group the plurality of connections into performance clusters based on the

determined performance similarities, Hoyer fails to disclose each and every element of independent claim 1 of the present invention. Accordingly, the Examiner is requested to reconsider and withdraw the rejection of claim 1 and any claims that depend therefrom as being anticipated by Hoyer.

Independent Claim 21

Claim 21 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Basani et al., U.S. Patent No. 6,748,447 ("Basani"). *See* Office Action at page 3. Specifically, the Examiner contends that Basani discloses every limitation recited in claim 21. Applicants respectfully disagree and request the Examiner to reconsider the rejection for at least the reasons stated below.

Basani fails to disclose each and every element of independent claim 21. More particularly, independent claim 21 recites at least the following limitation not disclosed in Basani:

> "a source device comprising:...a cluster manager configured to...group the plurality of connections into performance clusters"

Basani is directed towards a system and apparatus for distributing data files in large-scale distributed networks, such as the Internet. *See, e.g.,* Basani Abstract. Content creators transfer content to staging servers. *See* Basani column 8, lines 53-61. A Content Control Manager ("CCM") then takes over control of the content, and transfers new content on the staging servers to a distribution server. *See, e.g.,* Basani column 12, lines 19-43. The CCM contains a scheduler which notifies the CCM when a job is ready to be run by querying a database looking for assignments to be run, and checking to see if there are any conflicts which would prevent the job from running. *See, e.g.,* Basani column 9, line 63 – column 10, line 16. From the main distribution server, content is distributed down a tree of dynamically configured local distribution servers called Group Leaders ("GLs"), which distribute the content to destination computers known as BackEnd Servers. *See, e.g.,* Basani column 5, lines 43-50.

The Examiner appears to argue that a CCM which creates a prioritized list of nodes based on different parameters discloses the claimed cluster manager configured to group the plurality

of connections into performance clusters based on the determined performance similarities. *See* Office Action at page 4. Applicants respectfully disagree. Basani has absolutely no disclosure of the CCM grouping connections into performance clusters, as claimed. Basani discloses the CCM individually ranking each node in a specified order to create a distribution tree. *See, e.g.,* Basani column 22, line 31; column 16, lines 50-54. Even assuming, *arguendo*, that all nodes of distance x from the root are in a group, Basani does not disclose the nodes of distance x from the root utilizing a synchronization mechanism distinct from those nodes a distance y from the root. Indeed, because only a single CCM is utilized to distribute content to its specified nodes, it would be impossible for the nodes a CCM manages to utilize different synchronization mechanisms.

Because Basani fails to disclose a cluster manager configured to group the plurality of connections into performance clusters, Basani fails to disclose each and every element of independent claim 21 of the present invention. Accordingly, the Examiner is requested to reconsider and withdraw the rejection of claim 21 and any claims that depend therefrom as being anticipated by Basani.

Independent Claim 57

Claim 57 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Basani. *See* Office Action at page 3. Specifically, the Examiner contends that Basani discloses every limitation recited in claims 57. Applicants respectfully disagree and request the Examiner to reconsider the rejection for at least the reasons stated below.

Basani fails to disclose each and every element of independent claim 57. More specifically, independent claim 57 recites at least the following limitation not disclosed in Basani:

> "a source device comprising:...a cluster manager configured to...group the plurality of connections into performance clusters"

The Examiner appears to argue that a CCM which creates a prioritized list of nodes based on different parameters discloses the claimed cluster manager configured to group the plurality of connections into performance clusters based on the determined performance similarities. *See* Office Action at page 4. Applicants respectfully disagree. As discussed above, and fully incorporated herein, Basani has absolutely no disclosure of the CCM grouping connections into

performance clusters. Thus, Basani fails to disclose the claimed cluster manager configured to group the plurality of connections into performance clusters based on the determined performance similarities.

Because Basani fails to disclose a source device comprising at least a cluster manager configured to group the plurality of connections into performance clusters based on the determined performance similarities, Basani fails to disclose each and every element of independent claim 57 of the present invention. Accordingly, the Examiner is requested to reconsider and withdraw the rejection of claim 57 and any claims that depend therefrom as being anticipated by Basani.

Independent Claim 67

Claim 67 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Basani. *See* Office Action at page 3. Specifically, the Examiner contends that Basani discloses every limitation recited in claim 67. Applicants respectfully disagree and request the Examiner to reconsider the rejection for at least the reasons stated below.

Basani fails to disclose each and every element of independent claim 67. More specifically, independent claim 67 recites at least the following general limitation not disclosed in Basani:

"group each of the subsets in a distinct performance cluster"

The Examiner appears to argue that a CCM which creates a prioritized list of nodes based on different parameters discloses the claimed cluster manager configured to group each of the subsets in a distinct performance cluster. *See* Office Action at page 4. Applicants respectfully disagree. As discussed above, and fully incorporated herein, Basani has absolutely no disclosure of the CCM grouping connections into performance clusters. Thus, Basani fails to disclose the claimed cluster manager configured to group each of the subsets in a distinct performance cluster. Because Basani fails to disclose each and every element of independent claim 67 of the present invention, the Examiner is requested to reconsider and withdraw the rejection of claim 67 and any claims that depend therefrom as being anticipated by Basani.

Dependent Claims 2-6, 10-11 and 14-16

Claims 2-6, 10-11, and 14-16, all of which depend from independent claim 1, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoyer and further in view of Gillett, Jr. et al. U.S. Patent No. 6,295,585 ("Gillett"). Applicants respectfully request that the Examiner reconsider the rejection for at least the reasons stated below.

As stated in MPEP § 2143.01, to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Gillett is directed towards a communication method and apparatus for write-only networks. *See, e.g.,* Gillett Abstract. More specifically, Gillett describes a multi-node computer network for parallel computing. Each node has local and shared memory, which can be used in the event of a transmission failure between nodes to maintain accuracy and coherency. A central hub is utilized in the transmission of data to minimize error transmissions. *See* id. column 6, lines 33-45. As apparently admitted by the Examiner, Gillett fails to disclose, teach or suggest a cluster manager configured to determine performance similarities for a plurality of connections and configured to group the plurality of connections into performance clusters based on the determined performance similarities, as recited in independent claim 1 *See, e.g.,* Office Action at page 2; Office Action mailed August 22, 2005 at page 3.

Gillett is deficient with respect to independent claim 1, and thus dependent claims 2-6, 10-11, and 14-16, for at least the reason stated above. Therefore, the Examiner must rely on Hoyer to compensate for the foregoing deficiencies. Applicants submit that Hoyer fails to fulfill the deficiencies of Gillett, as Hoyer does not disclose, teach or suggest at least the following claim limitation of independent claim 1:

> "a cluster manager configured to determine performance similarities for a plurality of connections and group the plurality of connections into performance clusters based on the determined performance similarities"

As discussed above, and fully incorporated herein, Hoyer does not disclose a cluster manager configured to determine performance similarities of web servers, or a cluster manager configured to group web servers into clusters. Furthermore, Hoyer teaches away from the

claimed cluster manager, as most of the system disclosed in Hoyer would be entirely superfluous if the cluster manager disclosed in the present invention were taught or suggested. Hoyer is directed towards a system which can collect and compute basic data and send that data to a performance monitor client which permits a human to view and analyze the data. *See, e.g.,* Hoyer Abstract; Fig. 4; column 6, lines 15-30; column 6, lines 45-59; column 8, lines 8-57. The human utilizes the performance monitor client to configure the system. *See* id. If the present cluster manager was taught or suggested in Hoyer, there would be no need for the performance monitor client to exist, as the performance monitor server would be capable of automatically determining the performance similarities of its web servers, and automatically grouping them into clusters as necessary. Human interaction with the system, particularly the ability to analyze and configure the system, as Hoyer is designed to facilitate, would be entirely unnecessary. Accordingly, Hoyer does not disclose, teach or suggest a cluster manager configured to group the plurality of connections into performance clusters based on the determined performance similarities, as claimed in independent claim 1.

Because both Hoyer and Gillett fail to disclose, teach or suggest the claimed cluster manager, one would not have been (and could not have been) motivated to combine the plurality of connection interfaces, as disclosed in Gillett, with the method and apparatus for calculating web site capacity disclosed in Hoyer, to produce the claimed subject matter. As such the combination of Hoyer and Gillett cannot reasonably be said to render obvious the claimed subject matter of independent claim 1 or the claims that depend therefrom. In view of the foregoing, the Examiner is respectfully requested to withdraw the § 103(a) rejection from claims 2-6, 10-11, and 14-16, all of which depend from independent claim 1.

Dependent Claims 7-9, 12, 13 and 84

Claims 7-9, 12, 13 and 84 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoyer and further in view of Wipfel et al. U.S. Patent No. 6,151,688 ("Wipfel"). Claims 7-9 and 12-13 depend from independent claim 1. Claim 84 depends from independent claim 67. Applicants respectfully request that the Examiner reconsider the rejection for at least the reasons stated below.

Wipfel is directed towards methods and systems for managing resources in a computing cluster when nodes fail. *See, e.g.,* Wipfel Abstract. More specifically, Wipfel describes resource

management methods and systems for computer clusters utilizing remote memory probes, communication through a shared disk, and resource allocation featuring minimal locking such that individual nodes of computer clusters are utilized in an efficient manner. *See* id. column 27, lines 44-53.

Hoyer is deficient with respect to independent claims 1 and 67 for at least the reasons stated above, and fully incorporated herein. Therefore, the Examiner must rely on Wipfel to compensate for the foregoing deficiencies. Applicants submit that Wipfel fails to fulfill the deficiencies of Hoyer, as Wipfel does not disclose, teach or suggest at least the following claim limitation of independent claim 1, which is also similarly recited in independent claim 67:

> "a cluster manager configured to determine performance similarities for a plurality of connections and group the plurality of connections into performance clusters based on the determined performance similarities"

As apparently admitted by the Examiner, Wipfel fails to disclose, teach or suggest a cluster manager configured to group the plurality of connections into performance clusters based on determined performance similarities. *See, e.g.,* Office Action at page 2. However, the Examiner appears to argue that the presence of slower legacy networks and faster system area networks discloses, claims or suggests the claimed source device comprising a cluster manager configured to determine performance similarities for a plurality of connections. *See* Office Action at pages 12-13. Applicants respectfully disagree. There is absolutely no disclosure, teaching or suggestion that Wipfel determines performance similarities for a plurality of connections, as claimed in the present application. While the system disclosed in Wipfel can be connected to faster or slower networks, there is absolutely no disclosure, teaching or suggestion to compare the performance capabilities of the different nodes. As disclosed in Wipfel, when distributing tasks, the resources of nodes are allocated independently based only on whether a node has requested a task and whether a task is appropriate to distribute. *See* Wipfel Figure 7; Figure 8; column 15, lines 21-49; column 16, lines 49-61. At no time are similarities between nodes drawn, and at no time does Wipfel disclose, teach or suggest doing so.

Because Wipfel fails to disclose, teach or suggest determining performance similarities for a plurality of connections, and grouping the plurality of connections into performance

clusters based on determined performance similarities, Wipfel fails to disclose, teach or suggest the claimed cluster manager configured to determine performance similarities for a plurality of connections and group the plurality of connections into performance clusters based on the determined performance similarities as claimed in independent claims 1, 21 and 57, and similarly recited in independent claims 65 and 67.

Because both Hoyer and Wipfel fail to disclose, teach or suggest the claimed cluster manager, one would not have been (and could not have been) motivated to combine the systems for managing resources in a computing cluster, as disclosed in Wipfel, with the apparatus for calculating web site capacity disclosed in Hoyer, to produce the claimed subject matter. As such the combination of Hoyer and Wipfel cannot reasonably be said to render obvious the claimed subject matter of independent claims 1 or 67, the claims that depend therefrom. In view of the foregoing, the Examiner is respectfully requested to withdraw the § 103(a) rejection from claims 7-9, 12, 13 and 84, all of which depend from independent claims 1 or 67.

Dependent Claim 84

Claim 84, which depends from independent claim 67, stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Basani and further in view of Wipfel. Applicants respectfully request that the Examiner reconsider the rejection for at least the reasons stated below. Applicants submit that Basani and Wipfel fail to disclose, teach or suggest at least the following limitations in independent claim 67:

"group each of the subsets in a distinct performance cluster"

As discussed above, and fully incorporated herein, Basani has absolutely no disclosure regarding grouping connections into performance clusters. Furthermore, because Basani explicitly discloses only <u>one</u> CCM per distribution network, which acts as the "heart" of the system to manage the system's entire functionality, Basani actually teaches away from grouping connections into performance clusters. *See, e.g.,* Basani column 8, lines 61-63; column 9, lines 57-63. This is because, as discussed above, performance clusters utilize different synchronization mechanisms. Multiple synchronization mechanisms are directly counter to the central "heart" CCM management system disclosed in Basani, as they would destroy the CCM's ability to be in command and control of the entire distribution system at all times. Accordingly, Basani fails to

disclose, teach or suggest the claimed cluster manager configured to group each of the subsets in a distinct performance cluster, as claimed in independent claim 67. Since Basani is deficient with respect to independent claim 67, the Examiner must rely on Wipfel to compensate for the foregoing deficiencies.

Wipfel also fails to disclose, teach, or suggest the claimed cluster manager configured to group each of the subsets in a distinct performance cluster, as apparently admitted by the Examiner. *See, e.g.,* Office Action at page 2. This is because Wipfel actually teaches away from grouping subsets or nodes based on similarities, as Wipfel extols the virtues of having highly heterogeneous nodes with few similarities, especially with respect to performance. *See* Wipfel column 2, lines 22-36.

Because both Basani and Wipfel fail to disclose, teach or suggest the claimed cluster manager configured to group each of the subsets in a distinct performance cluster, one would not have been (and could not have been) motivated to combine the system and apparatus for distributing data files in large-scale distributed networks, as disclosed in Basani, with the system for managing resources in a computing cluster, as disclosed in Wipfel, to produce the claimed subject matter. As such, the combination of Basani and Wipfel cannot reasonably be said to render obvious the claimed subject matter of independent claim 67, or the claims that depend therefrom. In view of the foregoing, the Examiner is respectfully requested to withdraw the § 103(a) rejection from claim 84.

Dependent Claims 17 and 18

Dependent Claims 17 and 18, which depend from independent claim 1, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoyer and further in view of Kremien, U.S. Publication No. 2001/0034752 ("Kremien"). Kremien teaches a load balancing system and method for resource management in a computer system. *See, e.g.,* Kremien Abstract. However, Kremien does not disclose, teach or suggest the claim limitations of independent claims 1, 21, 57, 65, and 67. Notably, Kremien does not disclose, teach, or suggest a cluster manager configured to group the plurality of connections into performance clusters based on determined performance similarities. In particular, there is no cluster manager disclosed in Kremien, as each node executes the management software. *See* id. Furthermore, Kremien does absolutely no grouping of connections into clusters, based on performance similarities or otherwise. Thus,

Kremien fails to disclose at least the above identified recitations with respect to independent claims 1, 21, 57, 65 and 67, and as such the combination of Hoyer and Kremien cannot reasonably be said to render obvious the claimed subject matter of claims 1, 21, 57, 65, and 67 or the claims that depend therefrom.

As discussed above, Kremien does not disclose, teach or suggest grouping connections into clusters, based on performance similarities or otherwise, as claimed in independent claim 41. As such, the combination of Hoyer and Kremien cannot reasonably be said to render obvious the claimed subject matter of claim 41 or the claims that depend therefrom.

Dependant Claim 19

Dependant claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoyer and Kremien and further in view of Quarterman et al, U.S. Publication No. 2002/0177910 ("Quarterman"). Quarterman discloses methods for measuring the performance of computer networks. *See, e.g.,* Quarterman Abstract. However, Quarterman does not disclose, teach or suggest the claim limitations of independent claims 1, 21, 57, 65, and 67. Quarterman does not disclose, teach, or suggest a cluster manager configured to group the plurality of connections into performance clusters based on determined performance similarities. There is no cluster manager of any kind in Quarterman, Quarterman does group nodes based on performance characteristics, but this grouping is passive and for measurement and statistical purposes only; no active grouping to affect performance of the nodes or a source device is done. In addition, since the groupings are for measurement purposes, it is to be expected that a node would be a member of more than one group depending on the measurement taken. Again, this is quite outside the bounds of the present invention. To characterize Quarterman as disclosing grouping nodes based on performance characteristics would be an improper misrepresentation of Quarterman with respect to the present invention. Thus, Quarterman fails to disclose at least the above identified recitations with respect to independent claims 1, 21, 57, 65, and 67, and as such the combination of Gillett, Wipfel and Quarterman cannot reasonably be said to render obvious the claimed subject matter of claims 1, 21, 57, 65, and 67 or the claims that depend therefrom.

As discussed above, it is a misrepresentation of Quarterman to claim that is discloses, teaches, or suggests grouping connections into clusters, based on performance similarities or otherwise, as claimed in independent claim 41. As such, the combination of Hoyer, Kremien and

Quarterman cannot reasonably be said to render obvious the claimed subject matter of claim 41 or the claims that depend therefrom.

Dependant Claim 20

Dependant claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoyer and further in view of Hendricks et al, U.S. Patent No. 6,463,585 ("Hendricks"). Hendricks discloses methods distributing targeted advertising to television users. *See, e.g.,* Hendricks Abstract. However, Hendricks does not disclose, teach or suggest the claim limitations of independent claims 1, 21, 57, 65, and 67. Hendricks does not disclose, teach, or suggest a cluster manager configured to group the plurality of connections into performance clusters based on determined performance similarities. In particular, the performance similarities determined by Hendricks are not analogous to the performance similarities determined by the present invention. Network performance is in no way related to the performance of a television show in terms of popularity or target audience. Thus, Hendricks fails to disclose at least the above identified recitations with respect to independent claims 1, 21, 57, 65, and 67, and as such the combination of Hoyer and Hendricks cannot reasonably be said to render obvious the claimed subject matter of claims 1, 21, 57, 65, and 67 or the claims that depend therefrom.

Furthermore, as Hendricks is not analogous prior art with respect to grouping nodes based on performance similarities, Hendricks fails to disclose, teach or suggest at least the claimed grouping the plurality of connections into performance clusters based on the determined performance similarities of independent claim 41. As such, the combination of Hoyer and Hendricks cannot reasonably be said to render obvious the claimed subject matter of claim 41 or the claims that depend therefrom.

Dependant Claims 61 and 62

Dependant claims 61 and 62 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Basani and further in view of VanHuben et al, U.S. Patent No. 6,038,651 ("VanHuben"). VanHuben discloses a remote resource management system for a symmetrical multiprocessing system. *See, e.g.,* VanHuben Abstract. VanHuben does not disclose, teach or suggest the claim limitations of independent claims 1, 21, 57, 65, and 67. VanHuben does not disclose, teach, or suggest a cluster manager configured to group the plurality of connections into performance

clusters based on determined performance similarities. VanHuben does no grouping of nodes into clusters; the multiprocessor system disclosed necessarily has its processors grouped prior to operation of the system. Furthermore, VanHuben does not determine performance similarities of nodes, but rather uses a fairly straightforward priority queue when distributing tasks to specific nodes. *See* id. column 5, lines 39-57. Thus, VanHuben fails to disclose at least the above identified recitations with respect to independent claims 1, 21, 57, 65, and 67, and as such the combination of Gillett, Wipfel and VanHuben cannot reasonably be said to render obvious the claimed subject matter of claims 1, 21, 57, 65, and 67 or the claims that depend therefrom.

Furthermore, as VanHuben does not disclose, teach, or suggest grouping connections into clusters, based on performance similarities or otherwise, VanHuben fails to disclose, teach or suggest at least the claimed grouping the plurality of connections into performance clusters based on the determined performance similarities of independent claim 41. As such, the combination of Basani and VanHuben cannot reasonably be said to render obvious the claimed subject matter of claim 41 or the claims that depend therefrom.

Claims 22-56, 58-60, 63-65, 68-83, 85-87, and New Claims 88-92

Claims 22-56, 58-60, 63-65, 68-83, 85-87 and new claim 88 share similar limitations with claims 1-21, 57, 61, 62, 66, 67 and 84. Therefore, for the reasons discussed above, and fully incorporated herein, Applicants submit that these claims are patentable under the same rationales as previously discussed.

CONCLUSION

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

While this Response is believed to be timely, in the event that a variance exists between the amount tendered and that required by the U.S. Patent and Trademark Office requires to enter and consider this Response, or to prevent abandonment of the present application, please charge or credit such variance to the undersigned's Deposit Account No. 50-2613 (Order No. 45098.00014.UTL1.P1068).

Respectfully submitted,

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Date: August 21, 2006

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